COURT OF APPEALS
DECISION
DATED AND FILED

June 9, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP3199 **Cir. Ct. Nos. 2008TR7224**
2008TR7225

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

CITY OF GLENDALE,

PLAINTIFF-RESPONDENT,

V.

AMEY R. DELUGEAU,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JOHN SIEFERT, Judge. *Affirmed*.

¶1 FINE, J. Amey R. Delugeau appeals the judgment convicting her of operating a motor vehicle while under the influence of an intoxicant as a first offense, *see* WIS. STAT. § 346.63(1)(a), and the trial court's order denying her motion to suppress the evidence of her intoxication. The only issue is whether the

trial court erred in denying Delugeau's motion to suppress because of what she contends was an illegal stop. We affirm.

I.

¶2 Glendale police officer Eric Guse discovered that Delugeau was driving drunk when he approached her after she pulled into a vacant office-building parking lot at approximately 3:15 a.m. Guse was the only person to testify at the suppression hearing.

¶3 Guse told the trial court that he was driving "a marked black and white squad car" when he first saw Delugeau driving east on West Silver Spring Drive. According to Guse, although the speed limit was thirty miles per hour and there were no other cars in their vicinity on Silver Spring Drive at the time, Delugeau was driving steadily at twenty-five miles per hour and was "weaving" in her lane of traffic.

¶4 Guse followed Delugeau for some twenty blocks when Delugeau "pulled into" the parking lot "across two parking spaces." Guse testified that the office building "had burglaries in the past" and was across the street from an automobile dealership "where we've had numerous vans and tires stolen." According to Guse, he then made what he called "a field interrogation stop" to see what was up because he "felt that it was strange that [Delugeau's] car had pulled in there and parked across two spaces." None of the businesses served by the parking lot was open. Guse told the trial court that he thought the driver was either lost or impaired, especially because "[a]t that time of night there's a high possibility that that person could be impaired." Until he approached Delugeau's car, Guse did not know the sex of the driver or how many people were in the car because the "windows were tinted."

¶5 As noted, the trial court denied Delugeau's motion to suppress the evidence of her intoxication, rejecting her contention that the stop was unlawful. The trial court ruled that the officer had "a reasonable basis to approach [Delugeau's] car once it was parked in a parking lot where businesses were closed, at 3:00 [*sic*] in the morning, and the straddling two parking spaces." On our *de novo* review, we agree.[1]

II.

¶6 We evaluate *de novo* whether a traffic stop violates a driver's constitutional rights. ***State v. Post***, 2007 WI 60, ¶8, 301 Wis. 2d 1, 6–7, 733 N.W.2d 634, 636–637. We accept the trial court's findings of fact unless they are clearly erroneous. ***Id.***, 2007 WI 60, ¶8, 301 Wis. 2d at 6–7, 733 N.W.2d at 637. A law-enforcement officer may stop a driver to investigate if the officer can "'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant' the intrusion of the stop" even though he or she lacks probable cause for an arrest. ***Id.***, 2007 WI 60, ¶10, 301 Wis. 2d at 8, 733 N.W.2d at 637 (quoted source omitted).

> The determination of reasonableness is a common sense test. The crucial question is whether the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime

Id., 2007 WI 60, ¶13, 301 Wis. 2d at 9, 733 N.W.2d at 638. "The reasonableness of a stop is determined based on the totality of the facts and circumstances." ***Ibid.***

[1] The City did not argue and the trial court did not consider whether Officer Guse could have stopped Delugeau's car under the community-caretaker doctrine. *See* ***State v. Kramer***, 2009 WI 14, ___ Wis. 2d ___, 759 N.W.2d 598. Neither do we.

Although merely weaving within the confines of a driver's traffic lane is not sufficient to support reasonable suspicion sufficient to make a traffic stop, ***id.***, 2007 WI 60, ¶14, 301 Wis. 2d at 9, 733 N.W.2d at 638, it may be part of the mosaic that constitutes the requisite reasonable suspicion, ***id.***, 2007 WI 60, ¶¶19–26, 301 Wis. 2d at 11–16, 733 N.W.2d at 639–641. That is what we have here.

¶7 Delugeau was driving below the speed limit and weaving even though she and the officer were the only cars on their stretch of road at the time. Guse, based on his experience, testified that this indicated that the driver might be impaired. This and Delugeau's pulling into a parking lot around 3:15 in the morning when the businesses served by the parking lot were closed and had been the victims of burglaries, and across the street from another business from which property had been taken was sufficient to cause further inquiry because from the totality of the circumstances Guse could reasonably "conclude in light of his experience that criminal activity may be afoot." *See* ***Terry v. Ohio***, 392 U.S. 1, 30 (1968). Accordingly, we affirm.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.